

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Release No. 2833 / January 30, 2009

SECURITIES EXCHANGE ACT OF 1934  
Release No. 59329 / January 30, 2009

Administrative Proceeding File No. 3-13356

IN THE MATTER OF MICHAEL A. CALLAWAY

The United States Securities and Exchange Commission (Commission) announced the issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act) and Section 15(b)(6) of the Securities Exchange Act of 1934 (Order) against Michael A. Callaway.

The Division of Enforcement (Division) alleges in the Order that from at least 2002 through 2005, Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), through its Consulting Services program, provided advisory services to high net worth and institutional clients, including public pension funds. The Division also alleges that Callaway, as an investment adviser representative in the Merrill Lynch Consulting Services program, provided advisory services to close to 100 public pension fund clients in Florida, including many municipal employees, police and firefighters' pension funds.

The Division further alleges that Callaway misrepresented the process used to identify new money managers for clients in breach of his fiduciary duty to those clients. The Division also alleges that Callaway also failed to disclose to his clients that he had a financial incentive to recommend that his clients enter into a directed brokerage relationship with Merrill Lynch. The Division also alleges that Callaway failed to disclose, when recommending that his clients use Merrill Lynch for transition management services, that he received a portion of the commissions generated in connection with that service. The Division alleges that as a result of the conduct described above, Callaway willfully aided and abetted and caused Merrill Lynch's violations of Section 206(2) of the Investment Advisers Act of 1940.

A hearing will be scheduled before an administrative law judge to determine whether the allegations contained in the Order are true, to provide Callaway an opportunity to dispute the allegations, and to determine what, if any, remedial action is appropriate and in the public interest. The Order requires the Administrative Law Judge to issue an initial decision no later than 300 days from the date of service of the Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

